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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,314	06/12/2001	Mark A. Dovi	10005097-1	5150

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EXAMINER

WU, QING YUAN

ART UNIT PAPER NUMBER

2194

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/879,314

Applicant(s)

DOVI, MARK A.

Examiner

Qing-Yuan Wu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11/7/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-7, 13, 16, 18-22, 24-28 and 30-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7, 13, 16, 18-22, 24-28 and 30-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. Claims 1-3, 5-7, 13, 16, 18-22, 24-28, and 30-33 are presented for examination.
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/7/05 has been entered.

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-3 and 18-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-3 and 18-22 are directed to method steps which can be practiced mentally in conjunction with pen and paper, therefore they are directed to non-statutory subject matter. Specifically, as claimed, it is uncertain what performs each of the claimed method steps. The claimed steps do not define a machine or computer implemented process [see MPEP 2106]. (The examiner suggests applicant to change "method" to "computer implemented method" in the preamble to overcome the outstanding 35 U.S.C. 101 rejection).

*Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 5-7, 13, 16, 18-22, 24-28, and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott (hereafter Scott) (U.S. Patent 6,816,464).

7. Scott was cited in the last office action.

8. As to claim 1, Scott teaches the invention substantially as claimed including a method for transferring data between processing applications:

measuring a first data transfer metric for a first data transfer pathway between said first processing application and said second processing application; measuring said first data transfer metric for a second data transfer pathway between said first processing application and said second processing application [abstract, lines 1-4; col. 2, lines 10-15, 32-36, and 46-53; col. 4, lines 42-45; 406, 408, Fig. 4; Fig. 5];

comparing the first data transfer metric for the first pathway to the first data transfer metric for the second pathway; and selecting one of said first and second data transfer pathways for subsequent data transfers based upon the result of said step of comparing, and upon at least one user-specified data transfer rule [abstract, lines 4-9; col.

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2, lines 17-22, 36-39; col. 2, line 64-col. 3, line 3; col. 5, lines 3-5; col. 5, line 56-col. 6, line 22; col. 8, lines 40-49; 410, 412, Fig. 4];

using the data transfer metrics with at least one of the user-specified data transfer rules to control and identify an optimal data transfer pathway between the first and second processing applications [abstract; col. 2, lines 12-16, 40-53 and 61-67].

9. Scott does not specifically teach wherein said first and second processing applications and said first and second data transfer pathways are comprised by a single computer. However, Scott disclosed that his invention could be implement in alternative embodiments [col. 4, lines 62-65].

10. It would have been obvious to one of an ordinary skill in the art at the time the invention was made, to have recognized that the teaching of Scott could be implemented in a single computer or communication between various entities.

11. As to claim 2, Scott teaches the invention substantially as claimed including at least one of first and second data transfer pathways are comprised of at least one computer program [abstract, route checking and management program].

12. As to claim 3, Scott teaches the invention substantially as claimed including at least one of first and second data transfer pathways is a physical transmission media [102, 202, 302, Figs. 1-3].

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13. As to claim 18, Scott teaches the invention substantially as claimed including wherein said first data transfer metric relates to error rates [col. 3, lines 12-15; col. 3, line 67-col. 4, line 3; col. 9, table 2].

14. As to claims 19-20, Scott does not specifically teach said first data transfer metric relates to processing overhead, and wherein said processing overhead results from at least one of encryption and compression. However, Scott disclosed quality score, packet loss, average delay, and average jitter [col. 3, lines 12-15; col. 3, line 67-col. 4, line 3; col. 9, table 2]. It would have been obvious to one of an ordinary skill in the art at the time the invention was made, to have recognized that the teaching of Scott takes into consideration processing overheads, which cause delays, into the selection of a pathway.

15. As to claim 21, Scott teaches the invention substantially as claimed including said at least one user-specified data transfer rule comprises at least one of selecting the least expensive pathway [col. 8, lines 10-22].

16. As per claim 22, Scott does not specifically teach selecting the least expensive pathway for very large data transfers and the fastest pathway for sensitive data transfers. However, Scott disclosed providing individual or group routing preferences and/or other route information so that the system can select the proper route for the individual or group [col. 2, lines 17-22]. It would have been obvious to one of an ordinary skill in the art at the time the invention was made, to have recognized that the teaching of Scott could include selecting what the user preferred, such as the limitations mentioned above.

17. As to claims 5-7 and 24-28, these are method for transferring data between processors claims that correspond to the method for transferring data between processing applications claims 1-3 and 18-22. Therefore, they are rejected for the same reason as claims 1-3 and 18-22 above.

18. As to claim 13, this claim is rejected for the same reason as claim 1 above. In addition, Scott teaches the invention substantially as claimed including a computer system that minimizes data transfer operations, comprising:

a plurality of data transfer pathways through which data is transferred [col. 2, lines 32-33];

at least first and second processors coupled to said data transfer pathways [102, 104, 106, 108, Fig. 1]; and

a data transfer manager coupled to the first and second processors and coupled to the data transfer pathways network [col. 2, lines 28-31; col. 5, lines 56-63; Fig. 3].

19. As to claim 16, Scott teaches the invention substantially as claimed including wherein said data transfer manager is a computer program [col. 7, lines 7-9].

20. As to claims 30-33, these are computer claims that correspond to method claims 19-22. Therefore, they are rejected for the same reason as method claims 19-22 above.

21. The prior art made of record and not relied upon is considered pertinent to

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applicant's disclosure.

U.S. Patent No. 6,487,172 to Zonoun, and U.S. Patent No. 6,483,808 to Rochberger et al, U.S. Patent No. 6,366,560 to Ohiwane et al, U.S. Patent No. 5,452,294 to Natarajan, U.S. Patent No. 6,542,468 to Hatakeyama teach selecting an optimum route.

*Response to Arguments*

22. Applicant's arguments filed 11/7/05 have been fully considered but they are not persuasive.
23. In the remarks, Applicant argued in substance that:
- a. Scott does not disclose, teach, or suggest “using the data transfer metrics with at least one of the user-specified data transfer rules to control and identify an optimal data transfer pathway between the first and second processing applications.”
24. Examiner respectfully traversed Applicant's remarks:
- a. As to point (a), applicant's argument is mooted in view of the new ground of rejection.



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25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qing-Yuan Wu whose telephone number is (571) 272-3776. The examiner can normally be reached on 8:30am-5:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Thomson can be reached on (571) 272-3718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Qing-Yuan Wu

Examiner

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WILLIAM THOMSON  
SUPERVISORY PATENT EXAMINER